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# Liberty in the United States of America

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# Liberty in the United States of America

Michel Chevalier

Translated by Steven Rowan [srowan@umsl.edu](mailto:srowan@umsl.edu)

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The American people are renowned for being free, they love to be and they are, but how do they understand liberty? How is it practiced? That is what I want to seek to say here.

The subject is very large, and I am forced to divide it up. I am occupied here with political liberty, I want to speak of the law that the American possesses and exercises to take part in the governing of his country, his state, his county, his commune. This subject has also been well treated with such a great superiority and with such elaboration by Monsieur de Tocqueville that it would be rash to go there. The liberty of which I propose to speak is the object of political liberty: it is the buckler of liberty — alas! — a buckler as hard to handle as that borne by the mighty Ajax.

## I — Liberty of person and home

Of all men, the American is the one with the highest degree of liberty in his person; he is, in this context, as free as the air. He uses the right to go and come, just as the first paragraph of our own constitution of 1848, without having to render an account. The passport is unknown in the United States, just as in England. The American cannot be physically detained without serious justification, of which magistrates are the judges. In the United States individual liberty is guaranteed against every arbitrary seizure by the law of *habeas corpus*, which English colonists brought to their new home from the mother country, and which they conserve religiously. It is known that this law consists in every judge being held, on the basis of a simple claim presented to him, to determine the mandate for the person known to be detained or presumed by someone to be illegally held, and then to produce him without delay. The practical spirit of the Americans has imagined a strong sanction for *habeas corpus*. In the state of New York, any judge who refuses to expedite this mandate immediately would be subject to a fine of 1,000 dollars (5,400 francs). This would be sure to achieve its purpose.

Individual liberty is respected in the United States to the point that they are in the process of suppressing personal detention in commercial cases; for a stronger reason the newer states do not permit it.

For a stronger reason, the formalities permitted in our customs code, or which the customs service permits itself, physical examinations without respect for age, sex or condition, are unknown in the United States. It would be cause for revolution for a customs agent to dare to inspect the wife or the daughter of a citizen. Among us, have placed in the first edition of the preamble to the constitution the model of all liberties that the human race is charmed to contemplate in us, this is, or could be a routine matter for those who live on the frontiers or are travelers. The Constituent Assembly of 1848 was so little enlightened on this, which is a genuine and practical liberty, that there is not a word of protest against this savage violence.

The liberty of residence is protected in America equally with the liberty of the person. Residential visits are authorized in America under the conditions and according to formalities borrowed from English legislation, as with *habeas corpus*, and effectively observed without being allowed to fall into disuse. I have observed that French legislation nominally protects the residence of a French citizen with less zeal than that of the United States. But it is by the back door here that one enters a citizen's home, after having made all sorts of respectful bows before the front façade. With us, fiscal concerns have given the fatal blow to the freedom of residence. To carry out acts that are often pointless, sometimes imaginary, the many agents of the fiscal administration, each a soldier in this vast army placed under the directors-general of indirect taxes and customs, only need ask the police commissioner, and the home is violated.

One might say that fiscal interest demands this. If fiscal rights are not guaranteed, what will become of the state itself? Surely. Let us accept the suspicions, even capricious, of the fiscal authority, but for it alone. Since that is not all. The violation of the home as a result of the fiscal laws has ended in becoming a habit for satisfying mere private interests. What! In particular, my neighbor has the right to cause my house to be violated by the agents of public power, to wander through my apartments, to force me to open my closets, to probe my basement, my walls! Yes, of course, he can do it and does do it. It is enough that the desire occurs in those of our fellow citizens that spin cotton in Roubaix, weave calico at Lille or Rouen, forge hardware in Alsace, or process crockery in a kiln in any one of the eighty-six départements, in the end to devote oneself to manufacturing any of the innumerable articles against which the Convention and Napoleon pronounced a prohibition at the time when they fought the English through their merchandise. Under the pretext that these articles were prohibited, it was permitted to demand, and if it was the result of an

informant, it was certain that they would obtain that I, who am a merchant in Paris, must submit to the descent of commissioners of police surrounded by many agents who would search my apartment from top to bottom, making no excuses when they left. This maneuver, which attests such great contempt for the rights of citizens, does not obtain only in simple frontier villages where smugglers have made their domicile, but in Paris, not once but every year since 1840, not just among shopkeepers, but with people unknown to commerce. During this time, we boast of our liberties, and what is stranger, Europe believes us.

But I want to envisage liberty from a different, more practical point of view, if that is possible. What I have in my heart to study is how an American citizen, having become a man, exercises his faculties freely for his own advantage. Let us examine this industrious individual in his movements and efforts, who wants to create a patrimony, a fortune, by means of his work. Let us follow him in his enterprises starting with his adolescence, and we will see at what point through all of his active career, the federation, the state, the society, permit him the liberty honorably to obtain the goal he seeks. We will posit in parallel the facilities or obstacles that his equal encounters in Europe, in France.

## **II — Liberty in relation to the law of recruitment**

Here are our subjects after the passage of twenty years. They have attended schools, they have made apprenticeships, the moment has come when they are to commence gathering the fruits of their youthful labors and the sacrifices of their parents. The eaglet departs the nest and takes wing.

One of them is a locksmith, or a mason or mechanic, another is familiarized as a farm worker to the best methods of cultivation. In France, he could be from Grignon or Grand-Jouan, or in one of the establishments created by Monsieur Tourret's law, another is a sailor: he has a boat for fishing along the coast, or he is aboard a whaler with a good salary, and, hoping that he will marry, he sends some of it to his elderly parents.

On departing their parental home, the first encounters what will be our subject, which is the military law, providing for the defense of the country.

If we are in America, the military law tells him, "Go, young man, the desire that animates you is sacred. Work, prosper, make those with you prosper. The only disruption that I demand of you will be three days every year for the muster of the militia. I take charge of defending you, your family, your property, without touching your personal liberty. I will not ask the help of your arms and your carbine until the day you are needed because your country is in peril." In America, in effect, the regular army is formed exclusively by voluntary enrollment. The National Guard, called the militia, comprehending the entire male population

over twenty-one years, will not be called except in case of invasion. In the regular army, the officers are excellent. They are taught at the school at West Point. The ranks are filled with those who like the life of the barracks more than work in the fields or manufacturing. They are comfortable where they are, and no one misses them. Voluntary enrollment also recruits the crews of the fleet. The material, moral, social and political advantages of the liberty thus provided to the whole population, permitted to pursue its work without interruption while this is in force, are incalculable.

In France and throughout continental Europe, the military law speaks a different language. It tells this man of the countryside or the town, with his completed apprenticeship and his developed vigor, waiting to demand repayment for his accomplishments: "Halt right there! You are going off to be tested, and are unlucky, I have you for seven years. Don't talk to me about your love of work, your family sentiments, your hopes, or of your liberty: you're mine." Now one knows what will reduce the chance of not being taken. But unless he be the oldest son of a widow or of an elderly parent, or to have an older brother in the service, or to be malformed, the great probability is that the young man will be seized by the iron hand of the law and forced to serve if he cannot buy a replacement. There are départements or even cantons in which this probability becomes a mathematical certainty, for Lozère, for example, is regularly incapable of furnishing its proportional and legal contingent of healthy men, so that every healthy man is necessarily conscripted.

Does this regime have any compensation for the young man who falls into it? Some have asserted this. In the army, they say, the worker and the peasant are instructed, and they either *learn* or *act like it*: these are the words that are used. What is taught, I imagine that the clearest is charging in twelve counts and the art of the pary, numbers three and four, which is no use in the manufacturing industry or in agriculture. So far as *learning* goes, I have no idea what that means if it is not the art of seducing poor girls, in a republic, no more than under a monarchy, I do not think it is in the public interest that this art flourishes. We should take our French soldier as he is, not as Charlet's sketches and choruses from vaudevilles have it, but our young compatriot, a fusilier for seven years, will no more resemble the type invented by our artists or our singers any more than a shepherd of Normandy or Cantal resembles those of Florian. Is the French soldier happy in the army? Does he leave the colors a better worker than he came, yes or no? Who does not know that the life of the garrison is contrary to the love of work? If we speak of liberty, we will have to deal with this. How do we treat the liberty of these 80,000 young men, first selection of each of the generations, when we seize them for seven years, the best years of their lives, what impact

does it have on their places, their habits, their affections, their productive existence?

If it is because of the state that this sacrifice is demanded, I give in. If, as one of the princes of the tribune, a great historian, eloquently developed some months ago in view of the political wars he sought to support, that France should always have ready an *Austerlitz army*, and if only conscription could obtain this perfect war machine, we bow in compliance, but in my humble opinion neither of these two points has yet been well established.

I dare to say that the argument for political wars does not persuade me. It is the property of an absolute power that states be engaged in so-called political wars, which is to say wars that are for an object other than the defense of threatened territory or a national honor profoundly injured. The campaign of François I at Pavia was a political war. The invasion of Holland by Louis XIV so brilliantly begun but so badly finished, and which provoked a vengeance by which we burned two tenths of our losses — a political war. The Russian campaign, where the collapse was consummated — a political war! I will never finish if I must enumerate all disasters caused by political wars. When the populations were asked for something, one will no longer do such wars. The immortal Washington in his Farewell Address, a manual for the use of all governments that promote the cause of liberty and love their people, recommends that one abstain from them absolutely. In his eyes, these were undertakings that arose from disorientation and generated ruin. The prosperity and liberty in America would not have had such a rapid ascent without the advice of the Father of the Country being religiously observed to the present day. Recently the Americans have ignored this: the war they have launched against Mexico, which was otherwise perfectly honorable for their arms, is their first political war, but afterward it is now time to deal with the perils to their interior liberties, even to maintain their confederation.

There is in North America a political question that is similar to our own border on the Rhine. I am speaking of the ownership of Canada. The course of the Saint Lawrence, of which Canada is the key, has considerably more importance for the United States than the Rhine has for us. At any moment the mob in the United States is easy to excite by invoking the conquest of Canada; it boils through the entire time of which I speak. Have the statesmen of America decided on this basis to keep an army in being that would be numerous and invincible, an *Austerlitz army* in short? They are against it. It is that in a republic, and under the regime of equality, by whatever name, political questions cannot stand before all the others, are not those that concern the Rhine and Constantinople in Europe, what price would there be for the possession of the Bosphorus, in America the valley of the Saint Lawrence or Oregon: these are

questions that touch on immoral intellectual and material advancement of the population and on their liberty. I am speaking of true liberty, not false liberty for which our nation is so prompt to seize with an ardent love. This is how public men of North America think to this day.

I am not one of those who think that it will be possible to recommend to the European nations to suppress their armies. It is the entirely peculiar good fortune granted to the United States to be able to pass almost entirely on this. I presume that in the very history of North America the present state of things was only an accident, and that they will not delay in having a more imposing numerical force. I admit in any case that the European nations need to have large armies. There was a saying of Monsieur Cousin that expresses a profound truth: He said, *Civilization is a composite of intelligence and force*. The force that must accompany intelligence is not alone that civilization have power, but in order that it subsist, it must take different forms to respond to different needs. A people advancing in its civilization must be strong in the development of its industrial energy, strong in health and by the robust temperament of its populations. It also must be strong in arms at hand. This is only for this condition, that its government be respected within as well as without, for it is one of the effects of our nature that in politics there is no respect if there is no fear. When Napoleon, in his reflections on the battle of Wagram said that, when considering an issue he desired to have, "*There was no more Austrian Empire because there was no more Austrian army.*" By saying this he was enunciating an idea that will always be true in European politics, and which, at least in our own days, is perfectly exact. In fact, Austria has done well in our days. It is the Austrian army that has saved the Empire.

Certainly the immense armaments that the princes of Europe have maintained in full peace, particularly since 1830, were abusive. Four hundred thousand men in troops is too much for France, particularly at a moment when the presence of a final sedition means it cannot be used. The burden was excessive for the country. That is the condemnable side of the July Monarchy's administration. It was not able to reduce. An army is necessary for what it has to do.

But once the necessity of an army is recognized, does it follow that one must inflict on populations the charge of conscription that is levied on their families, on their careers, on national industry, on the majority of the young men of the poor classes over seven years? Without being a rash innovator, one could dispute that conscription is indispensable for the desired effect.

And here I do not call on America alone to witness this, there is a European nation, our closest neighbor, a nation that has known better than all others to muster *intelligence and force*, finally to accomplish this composition

that is civilization itself, a nation that loves peace and is yet the most conquering at this moment of any other, England. England has only voluntary enrollment, and its army is no less solid. It has all the soldiers it needs. One replies to this that England is an island, but, insular or continental, is it no less able to contain the menacing insubordination of Ireland? Is it not England that has innumerable possessions in all corners of the globe of which many are hard to guard, vast states? Is it not the one that, by deliberate action or necessity, pursues a policy of rapid conquest of gigantic proportions in vast regions of oriental India?

Under the Old Regime in France, the army was formed by voluntary enrollment. And one knows full well how voluntary enrollment was replaced by conscription. It was the work of the two most despotic governments France has known over course of fourteen centuries, the Convention and the Empire. Both of them needed to execute their plans, the one of violent propaganda, the other of universal domination. It was the regime of voluntary enrollment that led to the standing army of France when they wanted to emerge from the revolutionary period. Today there is complaint about soldiers being too young, since it is a remark to make, and many of our statesmen find that seven years of service is too little, and to do it well, it is necessary to extend by one year, by two, by three, the time during which our workers and our peasants are kept under the colors. With voluntary enrollment, there would be nothing more natural than to keep soldiers for twenty years. The life of a soldier would then be a career. The army could be much smaller and have the same useful effect. There is proof with England. It is not that our conscripts, involuntary soldiers, have less courage those willingly enrolled, but a large number of them are disabled or weak. The marching and maladies in case of war causes an enormous *waste* (I apologize for using this expression when it is a question of the lives of my fellow citizens): it is at the least a pretext for fattening the army numerically. With voluntary enrollment, to have the same real effect, one could settle for an army of half the size. The example of England proves it: with its grumbling Ireland, its Canada that threatens to escape, with its combats on the Cape, with its colonies of blacks that it has to overawe, with military positions like Gibraltar and the Ionian Islands, which always need a strong garrison, with at least thirty thousand men that the state lends to the Indian Company, England does not have even thirty thousand men in its land army. It would have to double it if it recruited its regiments by conscription on the working populations of Manchester or Leeds, or among the poor of London.

By all appearances, a voluntary army would cost less than an army of conscripts, would assure soldiers greater advantages, and would assure them better pay and a little pension at the expiration of their service. One recovers the



extra expense per head through the smaller quantity.<sup>1</sup> Hence there would be no financial objection to the return to an institution that has both a past and a present in Europe. When will we have it, indeed! This would be the ransom for a large number of working subjects that one would not hesitate to pay. It would be a very good thing for the nation.

In a country with equality, there are only two possible modes for the composition of an army: the Prussian system, where everyone is called up without the faculty of replacement, and the English system, where no one is called up. I believe the second is preferable to the first from a military point of view, because it has to produce better troops. The Prussian system, in effect, does not keep, cannot keep, the young men for more than two years under the colors. This is not long enough to train good soldiers, and so far as the advantage of training every citizen to handle a gun, our Parisian barricades have considerably reduced its value in my eyes.

The difference in military institutions between France and the United States, considered in the context of the liberty it leaves to an industrious man, would be even more striking if it was the navies that we are comparing. Among Americans, the liberty of the maritime populations is the same as with the men of the interior. For us, it is a servitude that burdens every seaman from the age of eighteen until fifty. During the space of thirty-two years, one was able to tear him away from the interests of his family to sail off in state vessels. A glorious servitude, you say. Certainly it is glorious to be a serf of the fatherland, but it would be better if the state renounced having serfs, and I add, a servitude not commanded but disapproved by reason of state. Of all the constitutional states, France is the only one to have this regime. The saving it provides to the treasury is obvious, and for the merchant marine. It has deplorable effects. It disgusts the seamen. Our best sailors, lovers of liberty, flee the rigors of this hard law and go serve on ships of other nations. If you want to achieve our maritime destruction, the surest means is to preserve the regime of maritime enrollment or classes. If you desire to France becoming again a great power on the sea by the number and quality of its sailors, start by introducing to the recruitment of our fleet all the liberty it deserves. Liberty, true liberty, is the talisman of modern times. True liberty in this case is the voluntary enrollment that the Americans, the English and the Dutch practice with success, except for us, and it is by reforms of this variety that we can hope to attach populations to the new political institutions that the great blows of revolutions have granted them.

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<sup>1</sup> I will not go into the details of execution here, but it is conceivable that one could demand from young men of wealthy families who want a replacement a sum equal to the actual cost of replacement.

### III. — On liberty in relation to the administrative system

One can see from these examples what liberty means in the spirit of Americans, and how it spreads. Let's pursue the biography of an American citizen and the appreciation of the liberty that he enjoys in the course of his active life.

The American citizen, certain that he will not be deterred from his plans for the future by military service, will be, he supposes, a farmer. This is the most ordinary situation. He is full of resolution and opinionated. Isolation does not frighten him. He feels himself of a temperament even to brave the fever that arises after clearing in the rich soil of virgin lands. He departs with his young wife, since he marries early, for the regions where the public lands are located, for the vast spaces of the West that the previous generation bathed with its blood, sometimes under the iron of savages, but today there is complete security. He is impatient to conquer a patrimony in the solitude by his labor, and thus to increase the riches of society, the domain of civilization. What reception will the law provide, the sovereign respected law, for the fine zeal that animates him? What latitude, what liberty, will it accord him?

Will it give him his lands for free? No, he will have to pay for them. The price is not exorbitant: the set price for auction is a dollar and a quarter an acre, about 16 francs per hectare, and so much land is for sale that one may always obtain a lower price. The principle is that the sale is never for credit, rather, it is on account. The system of purchase for a money price has the advantage of attaching the man better to the soil. It has its inconveniences, and I will tell you how one deals with it, but if the land were given for free, it was thought that the cultivator would invest less and depart more easily. For a stronger reason they do not make him a gift of a house, of cattle, seed or tools. There he takes his own risks and perils. He cuts down trees, and from the trunks he makes a cabin. His neighbors, if he has any, help him a little, expecting his own help in reply, to float his lumber downstream. The remnant of the forest he burns for cinders to enrich the soil. He lives meagerly at first with his little growing family on the soil he has worked, but soon his fertile soil produces more than he needs as provisions, and he sells to a merchant, who sends it to New York or New Orleans. He has barely any taxes. He has some savings that he increases by his industry. Here is the beginning of a fortune for an enterprising and intelligent man. A little good feeling or a lot of time will do the rest, by aid of hard work.

It is often the case that the man emigrating in this fashion from the east to the west is very poor, so that he cannot pay for his bit of land, even at the price of 16 francs and acre, since they will not sell less than 16 hectares, which would be 256 francs. There is an exception in his favor. They do not give him the land, but they allow him to take the space for a good farm, arranging so that he cannot

avoid payment. For this object there is a double mechanism that is simple and sure.

Federal lands, before being put up for sale, are divided on the map and on the soil itself in squares that are a mile (1,609 meters) on each side. I omit the larger divisions. It is what is called a section; they subdivide it into *quarter-sections*, which are 160 acres or 64 hectares. This is the lot that is put on sale at auction.

Our young cultivator arrives in a countryside that is already mapped and divided on the ground by stones and by signed cut on the trunks of trees. If division into lots has not yet taken place, it is forbidden for him to locate there, but they have created lots for auction. Of these two things one, either the formality or the putting up for auction, which takes place for all eventually, has taken place, or it has not yet taken place. In the first case, the emigrant chooses the site and orientation that pleases him, he takes his hatchet and, following the accustomed practice, he cuts down the trees he desires and makes a cabin, makes a fire in the midst of the forest, works the soil more or less to break it, and then he goes to register his declaration at the nearest land office. From this day, he is regarded as the proprietor, and he is reputed as such, saving a payment he will make later. He has acquired the right of *preemption*. The speculator who arrives on the day of the auction and throws an envious eye on the *squatter's* little plantation is deprived of the right to profit from it, but also from that day the occupant is held to pay on the basis of the set price. One cannot obtain in this manner more than a demi-quarter *section* or 32 hectares, at least unless there remains a corner of some already-sold section. Some conditions have been set on the exercise of the right of preemption to guarantee that the acquirer is a genuine man without a fortune, a true cultivator, and not a stock-jobber in public lands. I will not list them here, since that is not what concerns us. It suffices to say that they are not vexing, and that they fit quite well with the dignity of a man and his liberty.

If the formality of auction has already taken place, the emigrant proceeds in another fashion. He explores the countryside, making a choice of a quarter or demi-quarter section and takes possession of it entirely as in the previous case. In the strict terms of the law, he must make a declaration within a year, but he can extend the delay as long as he wishes. There, in the midst of the primitive forests, there is no vigilant police to constrain him to be precise. Once his declaration is filed, he pays that year without remission. Hence to acquire land it is necessary to satisfy the same conditions as for preemption.

Viewed on paper, the system in force for disposing of public lands in the United States offers nothing that stirs the spirit. It is unpretentious; it is on the ground. It is proper to say that it did not reach its present state except after

disputes that went on for years. It was redrafted many times, and the current law is only of 1841. In France, our administrative combinations are very fine on paper, it is an ensemble of counter-weights that appear perfectly coordinated. Everything balances and controls itself, but it is when it is at work that one should judge these mechanisms. Thus, in practice, the system adopted in America for public lands is a full success. If you want proof, count the states that have been formed from the federal domain, measure, if you can, the prosperity, the rapid progress.

The excellence of the system consists in that the cultivator coming from the east, without intrigue, without protection, without any support other than his love of work and a little money, does not rely on anyone's good will, is not subject to the slow movements of any bureaucratic hierarchy to achieve his desires. In the two cases I have described, he has nothing to do but go in person to country and say, this is mine saving payment. The taking of possession is worth a title in perpetuity. In the case of actual purchase at auction, or when he does not have the conditions demanded to exercise preemption, this is no more embarrassing. One pays in auction or to a conservator, one designates the lot he wants, and one receives a certificate that one remits to a fiscal agent with the money. This having been delivered, a session held, there are two receipts, of which the recipient gives one to the conservator and keeps the other for himself. This is his title, provisional to be sure; the definitive title comes later from Washington, but with this provisional title, one may occupy the land or sell it if he wishes.

Our possessions in Africa could be and must be for us what the West is for American populations. To emigrate from Paris or Alsace to Constantine [Algeria] is no more expensive nor any longer than to go from New York or Boston to Iowa or Wisconsin, but the long ordeal of our administrative procedures is a trial for an industrious man. Whether one is requesting a bit of land from his own département or from Africa, he can wait for years because years will pass before the ingenious formalities woven by the ordinances have all been fulfilled, before the bureaucracy has pronounced its *fiat*. In France we create administrative affairs by a method that recalls the classic machine of Marly, to which people came from two hundred leagues around to admire the operation of the levers and wheels and listen to its roar. In the place of that, the Americans have a good, very simple steam engine, weighing little, making a hundred times less noise, requiring a hundred times less paper and producing a hundred times more results. To return to our subject, the American mechanism organizes the time and liberty of the citizen extremely well. I have no doubt that one of the reasons the agricultural populations of France, Switzerland and Germany remain so cold to the lands of Africa is that one cannot establish himself there freely. The

government provides land and cattle for free, but it does not give the liberty to acquire what one wants, to settle where one wants, when one wants and how one wants. This is enough for the gifts to be disdained.

This extreme reserve of authority toward the enterprises of the citizen is found repeatedly in all parts of American society when it is a question of work and the production of wealth. The citizen remains invested with a very great liberty in anything touching work. It is one of the distinctive marks of this society and, what renders this fact more remarkable, for consumption and pleasure the liberty does not remain the same. The laws and even more the mores fix the limits. We will see why later.

The restraint of authority is greater as the authority is extended. The attributions of local authorities are relatively great. This is notably the case in the six states commonly designated under the name of New England. For this group exercises a preponderant influence on the mores of the land, and, more than others, it has contributed to making America what it is. There, each commune is in its own right a sort of independent republic.<sup>2</sup> Taken as a unity, each of the thirty states has an even greater independence in relation to the national government seated at Washington. This is restrained by a very small number of general attributions very precisely defined, of which it cannot exceed the boundaries. Thus the declarations that could be needed for certain acts, the authorizations that the collective interest of society demands in all countries, in America one does not have to notify anyone far away or solicit them from a large distance. In the case of dispute, there is no administrative jurisdiction that proceeds slowly or is referred to courts. All formalities are simplified, the writing reduced to nothing. The matters in which any sort of permission or intervention is sought does not last longer as many weeks in America as it needs years in France. To clarify this point, I give an example.

There is a proprietor who borders a river that cannot be floated or navigated. He wants to establish a dam to dry out a part of his land. In America, he would not have a word to say or a sign to make to any authority whatsoever. Let's suppose he has to seek permission, it would be in the town that is the seat of his county, which is barely the same size as one of our *arrondissements*. The question would be considered between the owner and a municipality, or a magistrate of the county. In case of any problem he would go before a court. In the case where the competent authority imposes excessive delay that could be considered a denial of justice, it could be brought up anyway. With us, a mechanism must be put in motion that includes eight distinct functionaries: the

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<sup>2</sup> I refer the reader who wishes to know what a commune is in New England to *Democracy in America*.

mayor, the sub-prefect, the prefect and his offices, the ordinary engineer of the ministry of bridges and roads, the chief engineer, the minister of public works, the council of state, and the head of state. There must be a solemn investigation — no, there must be two. There is a detailed form with nothing missing. If this is not observed, or if one does not conform in the view of the head of the office in Paris, the dossier returns to the point of departure and repeats the same circuit. No recourse for the inattention or laziness of a mayor. If it pleases him to keep a dossier for six months, or a year, too bad for you. It is known for a little affair of this sort to last no less than several years, and note that I am speaking of a course of water that cannot be floated or navigated. I know one owner who made his request in March, 1844; in August, 1848, he received ... the authorization, do you believe? No, the order to pay the receiver of registration the sum of 468 francs for costs incurred up to that day. The authorization will some day be delivered to his children, not without new fees incurred up to that day. The surface to be retrieved is not even two hectares. How many years would it have taken for the produce of that two hectares to compensate the owner for his cost and his troubles?

This fact that I report, for which I have the proof in my hand, is no accident: it is the life of the French citizen. They assure you that it is indispensable for the greatness of France and order in the state that there be centralization. I believe that, but I want to know of what sort. The administration of public lands is centralized in Washington, without irritating anyone, without irritating citizens in the exercise of their liberty to acquire lands to cultivate in conformity with the laws. It is not the pretext for a complicated, petty, paper-eating bureaucracy. To justify the vices of centralization such as we have had it for the last half-century, they have called a few abuses to court that have been punished, such as the picturesque example of calling into court that mayor in Brittany who wanted to imitate the monuments of Paris in his village. But don't they see that to prevent such possible abuses they have created a certain and permanent abuse, a systematic assault on the liberty to act and to work?

In politics, we have all been raised to adore absolute centralization, but men of intelligence look closer and call with their loudest voices for a tempered centralization. The exaggerations of centralization are due to two governments of rare despotism that I have already mentioned, the Convention and the Empire. It was necessary for the struggle they sustained against the whole of Europe, where they fell from their proper path by pride, by ambition or by the effect of furious passions, but it is useless, it is bad in a state that wants to be free, where citizens are avid to practice their faculties under the aegis of the laws. Now I cannot see in absolute centralization anything but an engine of enslavement. It accustoms the nation to passive obedience. There is in the capital a great wheel

that turns, whose every turn is followed with servility by every one from the banks of the Var to the rocks of Finistère. Whoever might be the master of the wheel is master of France. When a column of troublemakers or enemies of society comes to place their hands on it through the sleepiness and inattention of the guardians of the machine, they become dictators. What a sorrow, what an insult! These men who love liberty have nothing to do but bow their heads, the machine puts irons on their feet and hands! Behold the political effects of absolute centralization.

The examples that I have given show what the American style of liberty (I should say the Anglo-Saxon style) differs at this point from that savage liberty whose principal act is to destroy the established government, to alarm the comfortable, to menace everything there is, to open the way for the turbulence of a troop of agitators. On the one hand I see the power to raise and fortify the individual and the state, on the other I see nothing but the power to plunder society and degrade mankind.

We will continue this biography of the industrious man. We know now that in America the military law and the administrative system, notably the system of sale of public lands, provides them with great latitude, great liberty. We will indicate at what point it is free to follow the profession it desires and the enterprises it creates.

#### **IV — Liberty in the choice of professions and enterprises.**

In America, the general principle is that the professions are free. One encounters nothing comparable to the old closed corporations of arts and crafts that the glorious revolution of 1789 abolished with us, the lines of which were already disengaged in England and which have been abolished successively throughout Western Europe over the last sixty years. I do not know that anything similar ever existed in the United States, even at the beginning. If they had wanted them, they were unable to have them, since the colonials' spirit of independence was not all to prevent it: the division of labor that the corporation system presupposes is impractical in an emerging state where the population is lacking and where everyone is supposed to suffice by himself.

Privileges and monopolies were blocked by the general spirit of legislation in the particular states and by federal legislation. If, by stealth or abuse, a particular state conferred the privilege of a manufacture or of any sort of work, one sought and found a way to bring the act to the bar of the Supreme Court of the United States, which did its best to nullify it as unconstitutional within the limits of legality.

Still, there was nothing formal in the constitution of the United States to guarantee the liberty of the professions. It is not mentioned in Article VIII, which enumerates the powers of Congress, nor in the amendments, which detail the franchises of the American citizen. This silence is surprising. Is it an oversight of the legislator? Or perhaps the immortals who made the constitution judged that the liberty of the professions was so inured in the mores that it would be superfluous to write them into the law? Or they were stopped by the problem of fixing the point where the liberty ceased and gave way to the spirit of regulation? The fact is that the gap exists, and from the point of view of principles it should be filled. It is a matter, in effect, of a liberty as essential as that of speech and writing, that of assembly, of bearing arms — in favor of which the federal constitution contains express stipulations. But if the constituent legislature counted on the power of mores, its expectation was not deceived. Monopoly has only rarely found the means to slip into place bearing colors made to seduce, and the letter of the constitution finally furnished what was needed to make it surrender. Here is an example.

One of the most celebrated cases that American courts have ever taken is that of the heirs of the celebrated Fulton, who gave the New World and civilization an admirable instrument, the steamboat. In a fit of recognition, the state of New York, where Fulton's costly experiments took place, and where the definitive success of the invention was confirmed, granted him an exclusive monopoly, which naturally ceased at the frontiers of the state, and which was to expire after a long period of time. The antipathy of the citizens against this monopoly in general was stronger than the obligations they had to this ingenious and perseverant man. This produced a trial. The adversaries of monopoly held that the acts by which the legislature conferred this favor on Fulton<sup>3</sup> were contrary to the state constitution. The case passed through all the courts in the state, and in 1812 it was declared in the last resort that the legislature had not exceeded its powers, and also that such a monopoly would be valuable and should be maintained. But the antagonists of the spirit of monopoly did not see themselves as beaten. They took a detour to move the case to the Supreme Court of the United States. One steamboat was registered among the ships doing coastwise transit in a small New Jersey port, which is on the border of New York, and it applied to navigate the Hudson, which flows between New York and Albany. Fulton's heirs, since the late Fulton had left his privilege as his sole legacy to his widow and his children, opposed this, and the arguments revived. They referred to the article of the federal constitution (article VIII, par. 3) that

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<sup>3</sup> There were no fewer than five laws to this effect, from 1798 to 1811. The definitive success of Fulton was in 1807. He made the journey from New York to Albany in thirty hours that today takes eight hours.



attributes to the Congress alone the power to legislate on anything concerning the commerce between the various states, and to a federal law made in 1793 using this power. The Supreme Court of the United States, taking that point of view, declared in 1824 that the laws of the state of New York, from which Fulton had his privilege, was null in regard to the object under judgment. In the circumstances, it struck it with total nullity.

This issue was cited as a proof of the ingratitude of America, because what was not owed to Fulton! Isn't the steamboat a new discovery of the new continent? Without the steamboat, what would the immense valley of the Mississippi be, which is the finest part of the Union, and which represents three quarters of its area? But I feel this example is badly chosen. The United States has the same traits of ingratitude as all other peoples. Further, American legislation as interpreted by the Supreme Court of the United States was not iniquitous but was the guardian of liberty. *Dura lex, sed lex*. [=A hard law, but still law.] It was hard in applying to Fulton's family, but it was just and wise. With equal precedents in acts that have passed the legislature of New York, the port was open to a thousand abuses, to a thousand attacks on the liberty of work. The legislature of New York was misguided in its desire to grant Fulton the prize it attached to his discovery. It gave him what was not theirs to grant, and it despoiled the citizens of a natural right. The Supreme Court of the United States put everything back in its place. What would we think of the National Assembly if, to show the gratitude of France to one of our generals, it granted him a fief or restored for him in any other manner one of the institutions incompatible with the common law?

## **V — The liberty of the professions concerning the offices and liberal professions for which one should be graduated in Europe**

The privilege that results in France from the sale of offices instituted by the Law of 8 April 1816 and, in various other countries, support themselves on regulations that fixed the number of persons admitted to perform certain functions, on the basis of a real or supposed public interest, does not exist in the United States. Each is free to be an auctioneer, money changer, bailiff, solicitor or notary, insofar as these professions have their analogues in America, since the judicial and ministerial mechanism there is entirely different.<sup>4</sup>

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<sup>4</sup> Thus the notary, who with us is a necessary agent in the civil contracts of individuals, is not to be found in America, properly speaking. One prepares acts privately as they come up, and one may have them registered privately by the clerk of a court. There are notary publics in most of the states. Their attributions are restrained to witnessing acts that are to be given belief in another state, to wills, and to receiving certain depositions. It is in the nature of things that they are

The tendency today is to suppress even the guarantees society believed to need to demand from the man aspiring to defend the widow and orphan, or from him who pretends to build the life of his fellow citizens. On this point each state has made the laws as it intends. The federal authority cannot intervene, in the person of the Supreme Court of the United States, except if one of the general principles posed by the constitution of the United States was violated. Since there are thirty states, there are thirty legislations. Almost from the start, they were much easier on the imposition of diplomas than is the case in Europe. The facility resides much more in the men who apply the law than in the letter of the law, at least for lawmen. In Massachusetts (since I prefer citing the more enlightened states), to be a lawyer, until 1836 it was necessary to have received a *bachelor of laws* at a university, or to have effectively passed a number of years in the office of a practitioner who presents the candidate to the court. To exercise medicine, or what is a different thing, to have the right to sue a client for payment of fees, it was necessary to have received grades at a medical college that is part of Harvard University, near Boston. Today one is a lawyer in Massachusetts under the sole condition of passing a public examination before a jury of men of laws chosen for each session by the judge. So far as medicine goes, the clause for an examination is not necessary anymore, even to sue for fees: since 1836 the little barrier separating that profession from complete liberty has vanished.

In the state of New York it is only since 1846 that the profession of a lawyer has become a bit freer. Until then it was necessary to have achieved his degree from a university. Currently, to win the right to plead, one has only to submit to an examination that anyone who has read through several works of jurisprudence over a single month could pass without difficulty. If I am well informed, the lawyers of New York, instead of being opposed to the abolition of what they regarded as their privilege, are highly in favor of liberty, but they demand that at the same time the tariff that legally limits the price for their services be abolished, so that free competition would be the law on this point. At the same time, the special laws that would restrain the exercise of other liberal professions have also been revoked by this state.

After having cited these examples, I will abstain from saying that I regard it to be infinitely premature to measure French liberty against American liberty in relation to the professions I am investigating. Yet, if one reflects carefully, wherever universal suffrage is in place, that is, when it is part of mores, where it is routinely applied to everything, this full liberty of the professions, even of those that European society has believed should be reserved, is the law. Why! You

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regarded as functionaries and named in the same way. They hold their mandate from the governor, for example, assisted by his counsel, for a determined number of years.

suppose that every citizen of twenty-one possesses the intelligence and the discernment to be able to choose the officers of the militia, the sheriff, the justice of the peace, the mayor and the councilors of the commune, the legislature of his state and of the federation, the state governor and the president of the Union,<sup>5</sup> and you will deny him the intelligence to know if this or that person who is said to be good at pleading a case in his locality is worthy to be entrusted with his own affair! You hold it to be certain that the community of men can purge political charlatans, and would not think that he could no enough to defy those who attribute a particular power over fever! It is by following the gist of this reasoning that, from the point of view of logic, is irresistible, that the Americans have been led to eliminate in this way the limits on the liberty of professions. Time will tell whether they have presumed too much of national wisdom.

Up to this point, in exposing how liberty is conceived and practiced in the United States, I have done nothing but praise, even in an absolute manner, by recommending that what this nation does is a more or less exact imitation of Europe, in a relative manner, while recognizing that the extreme extension of liberty offers great advantages for America with few inconveniences, without having permitted concluding anything formal concerning Europe. Now I am approaching a subject on which American legislation deserves criticism, since it is inspired more than one time by passions hostile to liberty.

## **VI — On the liberty of industrial associations.**

The situation often presents itself where enterprises are beyond the power of a lone individual, particularly in a land where the law favors the division of fortunes. It is thus that there is a place for associating. The liberty of association is one of the essential attributes of a civilized man, one of the premier needs of the industrious man, one of the most powerful levers of production. In principle, it is vaguely guaranteed by the federal constitution, because this is the sense one can give to the permission to assemble in the first amendment. Yet the exercise of the right of association raises multiple questions, and it collides with certain passions that are controversial in a democratic country. America thus presents

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<sup>5</sup> In the state of New York, according to the new constitution, all public functions, virtually without exception, are subject to election by the universal suffrage of the state as a whole, or only with a certain circumscription. Independent of the functionaries I have enumerated, this is how the cabinet secretaries, the administrators of the state canals, the inspectors of prisons, the magistrates of all levels, the secretaries of committees, coroners, county prosecutors, and for better reason the officers of the militia are chosen. In most states, the magistracies are not elective.

multiple and complex phenomena on the subject of association. We will see that it is a territory on which its liberalism has regrettable weaknesses.

The inclination to associate is very strong in the Anglo-Saxon race. It is one of the most effective causes for the greatness that it has acquired in both hemispheres, not only in industry, but also in politics. One of the most eminent jurists the United States has, Chancellor Kent of the state of New York, remarks concerning industrial associations, that it has made progress in parallel to those of wealth and of civilization. When it is a question of simple associations analogous with our *sociétés* as a collective name or in function, where five, ten or twenty persons or even more have been joined before the law into a single person, American law, in all the states, has become bit by bit more open and accommodating.<sup>6</sup> But, concerning *incorporated companies* or *corporations* that correspond to our *sociétés anonymes*, and have the same requirement for authorization that only a special law can establish, American politics has deviated. From the beginning the custom was to favor these corporations until about fifteen or twenty years ago, the dominant opinion grew hostile. Some of these companies, of the class that created a bank, committed grave misdeeds. The partisan spirit seized on this and created disputes in the eyes of the multitude to excite its passions in the manner of a Spanish toreador waving a red cape in front of the robust, majestic animal they were about to skewer in the circus to render it mad in the end. They have described the quarrel in America as one of labor against capital, which has become so menacing. The capitalist has been painted as an enemy of the worker. They have described a portrait of *the exploitation of man by man* for the attention of the multitude. It is said that everything that exploded into daylight after 24 February [the Paris uprising in 1848] among us, caused consternation among industrious and peaceful men and shook the society to its foundations.

Since in America the mob is much less deprived of instruction than in Europe, since it is possible for many reasons to reward material labor there, since the Anglo-Saxon race, when it is without any mixture, has much more respect for law and the established order than with us. Since finally there is among the Anglo-Saxons a resistance to material disorder if it begins to disturb society, a resistance that is immediate and energetic, the arguments of demagogues against capitalists and against companies in general will not cause the same excesses on the other side of the Atlantic of which France was the victim. They have determined that guilty demonstrations and legislative acts were to blame.

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<sup>6</sup> No more than half the states have adopted our *société en commendite*, whose advantages are great. English law does not recognize this form of corporation, which has been copied from us in Massachusetts, New York, Pennsylvania, Louisiana, and ten or twelve other states.

From the beginning, the legislature proceeded with a prudence that prevented the influence of companies from becoming dangerous. They avoided as much as possible conferring on them an exclusive privilege. Hence they permitted individuals to constitute themselves as corporations to operate banks, but at their sides, in the same town, they created a second bank, a third, even a twentieth. To cause capitalists to dig a canal or open a railroad, they sometimes have had to give a guarantee against competition, but, in every case, whatever the ownership of the routes of communication might be, like all others, perpetual, the privilege such as it exists is temporary.

Somewhat later, the legislature had reason to fear that authorizations given too easily might encourage speculation, for which Americans have an inclination. It is even permitted to suppose, and I take this from an illustrious source, Mr. Gallatin, that some of the members of the legislature allowed themselves to be corrupted by the entrepreneurs of projects and particularly by the founders of banks. It became the case in many states, including New York and others (in 1821) that the rule was made that a majority of two-thirds of the legislature was required for acts of authorization. In several states, shareholders were submitted to unlimited responsibility, while in the case of *sociétés anonymes* in France or in the incorporated companies of England, the obligation goes only as far as the capital each has subscribed. The convenience of this innovation of the American legislature is very contestable. It obviously tends to frighten away capital and remove it. It would be quite unwise at a time when America is trying to attract foreign capital to increase its industry and enliven its soil.

They had an inspiration more in conformance with reason and liberty by finding a system that would dispense the companies, or certain categories among them, from special legislative authorization. It has been the case that in New York since 1838 it is legal for a new arrival to establish a bank and issue bills under certain conditions that are fixed by a general law. With this system at the least, no one may claim privilege and monopoly. There is a common law that, like the sun, illuminates everyone.

But what one hates to see in American legislation is the systematic introduction in the authorizing acts of a clause visibly dictated by an arbitrary spirit such as this: *The legislature shall have the right to revise, amend and even to revoke the act of authorization at any time.* Such an article would be in its proper place in a *firman* of the Sultan: it has no place among the laws of a free people. It is contrary to the axiom of jurisprudence admitted among all peoples with a sense of equity, *not wishing to give or take.* Chancellor Kent disapproves of this disposition severely and notes how American legislation expresses there a

particular character of spoliation.<sup>7</sup> The article has still become fashionable in a large number of the states of the Union, even the most notable. It is proper to say that it has not yet been used even once, and if one of the states decided to make use of it, one would probably receive a reversal as unconstitutional from the Supreme Court of the United States, the austere guardian of public law. It does not appear that American capitalists are particularly alarmed, for new companies continue to be formed. It is no less true that the adoption of this clause in America is a bad sign. It is the purest form of despotism: it is proof that the pernicious influence of demagogues has succeeded in dominating to some extent the councils of the states.

In some of the states, after seeing corporations vested with powers where it is possible to concerned lovers of liberty to perceive a sort of monopoly, and for tribunes to discover a text for their denunciations, they have reserved to the state itself enterprises that elsewhere are commonly conferred on associations of capitalists. In two Western states, Indiana and Illinois, the constitution bans every bank except for that which the state will judge proper to establish with its own funds. In Iowa, this prohibition is, if you will, even more absolute against banks. Often the state takes up the building and operation of certain routes of communication considered as arteries of commerce. But the state banks have failed completely. For being involved in credit operations, the state of Mississippi was ruined without even being able to say, "All is lost save honor." The attribution of routes of communication to the community has overwhelmed the finances of several states, notably of Pennsylvania, Indiana and Illinois. It has even reduced them to bankruptcy. This was not justified by the success of a limited number of cases where private industry was incapable of gathering the necessary funds, and where the scale of commercial movement permitted the government to win good receipts with a tariff of tolls below what was needed in advance according to individuals, after the government had completed the public work. The great Erie Canal, in the state of New York, is a striking example of the concurrence of these two circumstances, but the state of New York itself has authorized a very large number of public works companies to which it has accorded clauses advantageous enough for them to prosper. In this state there was no systematic exclusion of public works companies. The same was the case in Pennsylvania. In Massachusetts and Virginia, which are the most influential states and where they are full of solicitation for sound republican doctrines, the state has intervened to assist the spirit of association that lacks adequate resources and, because of the dimensions of territory in relation to population, has much to provide. Still, it has not undertaken by itself anything serious in

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<sup>7</sup> *Commentaries on American Law*, vol. 2, p. 306.

terms of canals and railroads: everything in these two enlightened states is performed by the hands of the companies. The same exclusion, instead of freely producing itself where the legislature intended, was disguised in mischievous stipulations and unacceptable demands. It is that they well understood that the ability to associate is an essential attribute of a free man, and that one does not dare manifestly to deny this precious liberty under the pretext of preserving liberty.

The temptation to invest the state with monopolies was not extended to objects other than banks and the routes of communication. Particular states do not have a navy, nor do they have the right to strike money. Only the Union has the shipyards and the mints, and these are the sole factories it owns. Yet, is it not the government that manufactures the steam engines for the fleet? Hence the Union has maritime arsenals, but it does not have foundries such as ours at Ruel, nor construction operations such as those of Indret. It operates the postal service, but everything there is in operation. The manufacturing of gunpowder is a free industry in America, and even that of weapons up to cannons of the highest caliber, for the stronger reason of the commerce in these two articles, arms and gunpowder. I cite this fact without pretending that it could be imitated here. Among us there is a minority, miniscule in number but infinite in audacity and turbulence that, if citizens were allowed to have gunpowder and arms, would infallibly use them for sinister purposes.

The monopolies that have been taken over by the governments of many European countries with fiscal intention, such as the tobacco monopoly in France, or that of public vehicles in Germany, are completely unknown in America.

Insurance has spread widely in the United States. Insurance there is much more part of the mores than in the European continent, and, when it is for fires, it would be imprudent not to have it, since America is the land where people are inclined to sound the fire alarm the most. Not one year passes without registering some dreadful conflagration. Who does not recall the great fire of December 1836 in New York, when the loss was more than 100 million francs? Last year (1848) was marked by three or four terrible fires, at Albany, Brooklyn and elsewhere. It was only a few weeks ago that journals reported that a quarter of the magnificence city of St. Louis in Missouri had been devoured by the flames. The loss is estimated at 32 million francs. Fire insurance is a universal interest in America. I do not know that there has ever been a question to make it a state monopoly, any more than any other mode of insurance. In this context, as in many others, our financiers of 1848 drew their republican inspirations from elsewhere than in the laws and customs of the powerful and glorious republic founded by Washington and Franklin.

Liberty, extreme liberty, unlimited liberty in work and the use of capital, behold, despite some anomalies, the general spirit of the legislation of the United States. Even for public functions, there has been elaborated and taught in America a theory of *rotation*, which would have effect to be passed to almost everything, I recall having seen it sustained in a solemn message of General Jackson, but this is nothing but a caricature of the liberty of professions, and no one speaks of it today.

## VII — Restrictions caused by laws and by mores on the exercise of liberty

I have shown that in America the citizen enjoys a very high degree of liberty in his person and home, and that the industrious person possesses extreme liberty in the employment of his faculties and in the pursuit of wealth. Is this the same as saying that each person there may follow his caprice, abandoning himself to his cupidity and unchaining his passions? Certainly not. There are many forces continually operating to contain the individual, but themselves are regulated so as not to infringe on the liberty of an honest man and a virtuous citizen. Among these forces, I now distinguish the law.

There are cases where the abuse of liberty by a single individual will infallibly cause great injury to the entire community. So that in an election a twentieth or a tenth of the population supports a candidate insulting public reason, this is no great evil, provided the other nine tenths, with what I suppose are sane ideas, instead of being intimidated by the fools and fanatics, fulfill their duties as citizens and cause order to be respected. That some credulous persons would become enthusiastic for the drugs of a quack and ruin their health, the evil could be graver, since the damage is not just to that person. Each for himself, the legislator could say, the lesson will profit the rest of the public. But here is a producer who works for exportation, and who, speculating on the inattention of the buyer, puts on the foreign market products of bad quality. It will have the effect that goods of American origin will be denounced abroad, and they will be rejected without distinction. With this consideration, they have judged it proper to have inspection laws for export for American products with a large market overseas, at least of those goods that can be easily verified, such as flour, which is sold in large quantity to the Antilles and throughout South America. Thus the 13 million kilos of salted meat England received in 1847, and which France is wrong to reject, so that public hygiene causes us to suffer in the form of a shortage of meat.

American laws of inspection for exported flour and salted meats have nothing in common with the factory regulations of which France was finally freed by 1789. Each barrel of flour or salt pork is visited only at the port, on the dock at



the moment of embarkation. With a red-hot iron, the inspector imprints a mark declaring that the inspection was satisfactory. In the case of salted meats, the detail of standards is curious to read: it indicates the pieces of the beast that cannot be exported, the quality of the brine and other things indispensable to good preservation, but strictly elementary. One has left it to each maritime state to perform laws of inspection. Congress has only the right to revise and control as need arises, ultimately so they will not serve as pretexts for taxes or other abuses (Title I of the constitution, article 10, paragraph 2). They had the intention to make the mechanism of these laws simple and very expeditious. French administration could learn from that how one must dispense with all the rules of functionaries and to reduce the mountains of paper, and how it is possible sufficiently to guarantee the public interest without imposing on commerce too many delays, charges and wastages.

Laws of inspection are very old in America; they date from the colonial regime. They have been opposed for thirty years by shameless small-time traders who have brought great prejudice against American agriculture. One could suppose that for Americans, this is a remnant of the Old Regime, somehow escaping from the reformers. I don't believe these attacks. The laws of inspection do not cause any complaint among honorable merchants or among cultivators, but they injure dishonest and sordid interests who are at least as active in the United States as anywhere else, and for the system of inspection to be maintained in our times, it is necessary for it to be well defended.

For the rest, it is never necessary to seek absolute unity among the laws of nations. The human heart is an abyss of contradictions. Legislation, the work of man, cannot avoid being resented. Liberty is highly honored in the United States, while the regulatory spirit has its adorers there, and often one forces the legislators to do their genuflections before their authors, but these are exceptions that prove the rule. I found an example in the acts of Congress of last year: a law was passed to protect the American citizen against adulterated medicaments that European chemists wanted to send them. One can falsify all medical substances: some years ago, didn't they give our heroic soldiers in Africa, when fever raged, fecula instead of quinine? To protect the American public against fraud as well as they could against Europeans, Congress, by the Law of 26 June 1848, established an entry inspection for medicinal substances.<sup>8</sup>

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<sup>8</sup> This law did not attain its end because it did not stop domestic adulterations, and domestic speculators did not hesitate to exploit the monopoly reserved to them. From the moment when the legislature sought to protect citizens against bad medicaments, it was not possible to avoid a visit to the pharmacies, that operated according to the rules of the particular states. It is known that in France this visit was or must be done, but it seems unlikely that an American goes there.

As examples of the regulatory system that is the true reverse in American legislation, one could cite current laws in the state of New Jersey as well as the state of Alabama that impose a tariff on inns, but it is not necessary to stop on these little contradictions. Everything done in America with laws of this sort is, so to say, born dead. Those that remain from earlier times do not have long to live.

In summary, we hold it to be demonstrated that in America the working man whatever he cultivates, whatever he manufactures or trades, whatever liberal profession he practices, possesses an extremely extended liberty in whatever he does to exercise his faculties and to follow his ideas. It is the country in the whole world where he has the most. In some situations, such as the example of exchanging his products with those of other peoples, or to send abroad objects useful for production, such as iron, steel or machines, since the reforms of Robert Peel England is placed a degree higher, but on many other sides, North America offers a man who wants to work with profit, to a poor man particularly, more latitude and commodity. So far as liberty goes, all things considered, he still has the advantage.

#### **VIII — On liberty considered in relation to consumption and work — the counter-weight it has in mores rather than in the laws.**

Alongside the liberty to produce and to work in all its forms, there is that to consume and to play. Here liberty encounters along its path argus monsters, vigilant and severe, who have planted barriers in places that, until now, they have been unable to hold. It is the religious sentiment that wishes to be respected, it is public and private morale that does not support being violated and reacts vigorously against those who insult it; it is also the law.

Boston boasts of being the cradle of the franchises of the New World. It is there that over two and a half centuries, since the debarkation of the Pilgrims on the beach of Plymouth until the Declaration of Independence that a liberty emerged that, once appeared, became irresistible in its growth. It is at Boston that the most complete spirit of *self government* developed, which returned the direction of the individual to himself. When the movement began to free the thirteen colonies, it was certainly the South that furnished the emerging confederation with the greatest of its heroes, whose authority, moderation and unshakable firmness assured the triumphs of American arms, but it was the population of the region of which Boston is the center, more than any other, that accomplished this fine revolution, and the palladium of independence was at Boston. I know no men who so appreciate liberty, who utilize it with more intelligence, who make more sacrifices to reconquer what they have lost, than the

population of the six states making up New England, who are summed up in Boston as much as anywhere else.

Yet in Boston, if you should cross the planted area called the *Commons* (one of the ornaments of the city) with a cigar, you will be condemned to a fine, if I recall correctly, for 5 dollars (27 francs). They do wish that your liberty to smoke should impinge on the liberty of the public, which does not wish that its fine promenade, although they seldom frequent it, should be infected by the odor of tobacco. Is a cigar your delight? Smoke at home, citizen.

This little detail, taken from an infinity of others, reveals one of the characters proper to American laws. It is a special and definite variety of the regulatory spirit, but the tinge grows weaker as one leaves the north. It weakens through the influence of climate on the laws, it is impossible to deny, even if one refuses the extent of influence described by Montesquieu. It weakens because the population of New England, this type often designated by the title of *Yankee*, which fortunately for the prosperity of the Union, has sent a swarm of its children, more or less its advanced sentinels, to all the states, with fewer representatives in the South than in the North. It weakens in the South because, in the slave states, the habit of domination makes whites prouder, and that thus the law is held to be more hesitant on injunctions touching the person, to avoid its being violated. It weakens because, outside of New England, even in the North, the philosophy of the eighteenth century has taken root enough to introduce to a certain point French tolerance. In contrast, the New England man neither knows nor loves any philosophy except the Biblical spirit, which is not indulgent but austere and rigid. Yet the regulatory spirit, applied to objects such as I am about to note, is found to a certain degree in the totality of the territory of the Union, and it will characterize America to the extent that the Yankee is in ascendance. For the maintenance of the republic of the United States, it may be desired that it will continue indefinitely.

In antiquity, the men that posterity has made the model republicans have always thought that luxury and debauchery were the mortal enemies of political liberty and that irreligion was its poison. Nothing is truer, and it is a truth of all times and all places. Behold a population that suddenly begins boasting it is republican and turns to shouting in a loud voice, "Long live the republic!" Don't believe his clamor. Taste the chicken and probe its kidneys. If you discover that he has lost his religious faith, that skepticism has corrupted him, that he has barely any souls of the elites to direct his philosophy, torches of which the vulgar eye cannot see any light, boldly declare that these pretensions to a republic are only boasting. Or rather, if what strikes you at first is that mores have relaxed, that the wealthy have a taste for the girls at the opera, and that, among the workers, a large number of those who put up the most posters for the republic,

are living in debauchery and concubinage, do not hesitate, proclaim that the republic is a chimera or a lie. And how could someone who denies God himself, source of all duty, should regularly practice his duty with this spontaneous zeal that is the essence of the republic? How is he who is traveling down the wide road of ordinary morality to follow the steep footpath of political liberty with that firm and sure pace that is the necessary style of the republican? The same is true for the love of luxury and pleasures, for the disdain of economy. How are those who spend their weekly salary on Sunday and Monday to become sincere citizens of a republic? Is one likely to act in a particular manner on affairs of state when he leads his affairs with the most perfect improvidence?

In the United States it is a principle well confirmed in those states that set the tone, that the republic has no solid foundations except religion, morality and simplicity. In consequence, they demand of each that he appear religious, a faithful spouse, and that he be simple and modest in his existence. If you wish to be something in the city and the state, these are the standards that it is necessary for you to show. You may be whatever you please, a Unitarian, Methodist, Anabaptist, Anglican, Calvinist, or even Catholic.<sup>9</sup> You may have the natural religion of the Quakers, and you would tolerate even to the point of being Mohammedan, excluding only the plurality of wives. But you honor God, you render him homage in His temple, and if not you will be under the ban of society. Even if you have rigorously pure morals, you profoundly respect the wife of your neighbor, your hands never touch a card game, you indulge in no luxury. If not, you will have here nothing but ostracism. It is as if Cato the Censor lived in the United States. It is also as public opinion proclaims up to the present day. They assure us that, as luxury spreads, that in the large towns morals are relaxing, If that is the case, the country will become more agreeable to live in for opulence and men of pleasure, but the democratic cause will be compromised and the republic will change its character, if it even survives.

The difficulty was to know if, to maintain the religious spirit and moral principles, the law should be the chief instrument: in other terms, if one has sumptuary laws, laws that penetrate into private life, laws under which even the conscience was capable of being judged. This was the determination one finds at the time of the foundation of the north-eastern colonies, particularly in Massachusetts. This should not surprise: it was the spirit of Europe itself then. The Puritans who, pursued for their beliefs in Europe, came searching for an asylum in the forests of Massachusetts and giving to the world the example of the first colony founded by religion alone, opening on this point the ideas of their times, for which they had already had to suffer. Note under these energetic and

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<sup>9</sup> One will see a bit lower why we place Catholicism a bit to one side.

rude souls that injustice had bruised, the unforgiving Protestantism of Calvin was taken to its furthest exaggerations. Once in America, on virgin soil that no religious or social institution had encumbered, the Puritans abandoned themselves to the impetuosity of their inclinations of reform; they rejected the tradition that the Roman Church supported to follow the authority of Scripture, but not half-way. The pure and simple Law of Moses became their law, not only religious law or civil, but political as well. The regulations that a great man had sought on Mount Sinai to impose on the gross vulgarity of the twelve tribes that he had brought from the slavery of the Egyptians persisted in its literal form to serve as a code for the Christians of the seventeenth century, which was imposed as it soon was in Great Britain. One has at the outset in Massachusetts the confusion of the state in the Church, theocracy, systematic intolerance. Whoever was not in the congregations could not support himself in the country and was not supported. The law regulated everything, made statutes for all the acts of life. It was not just exclusive, it was pitiless.

When one reads the old documents of the two principal states of New England, Massachusetts and Connecticut, one finds there the penalty of death applied by virtue of the articles of Deuteronomy, Leviticus and Exodus, not just for crimes against persons or property, but also for sins that one only renders account of to one's confessor or to God. Hence it is that the hangman is charged to make religion and morals respected, even under the domestic roof. Blasphemy is hence a capital crime for the reason that is pronounced in Leviticus. Adultery is struck with the same penalty by the same motive. Exodus, Leviticus and Deuteronomy show that sorcery was recognized as a crime that incurred the supreme penalty among the Hebrews. It was no less in Massachusetts and Connecticut: in the middle of the seventeenth century, sorcery was recognized as a crime that led necessarily to death. The period from 1688 to 1692 was marked in the history of Massachusetts by a series of trials where the astute ambition of one minister named Cotton Mather involving a great number of respectable persons, including one who was a venerable preacher, and the condemned were executed.<sup>10</sup>

In the details of private life, they proscribe what one judges as conforming with the legislation of the Hebrews, and they reprove what seems blamable from the same point of view. The blue laws of Connecticut that governed that state since 1630 are even more famous than the regulations of Massachusetts. One

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<sup>10</sup> In France, the execution of Urbain Grandier on the pretext of sorcery was in 1634, that is forty-four years before that of the victims of Cotton Mather. The execution of the chevalier de La Barre for sacrilege was as late as 1766: it is true that this was an isolated event. The narrative of the trials for sorcery in Massachusetts is one of the most curious in the excellent *History of the United States* by Mr. [George] Bancroft. It is in chapter XIX.

finds there, for instance, the banning of tobacco, and it is permitted to believe that memories of this are not alien to the local ordinance of which I just spoke and which, in addition, has nothing but what is easy to justify on the subject of the promenade of the Boston *Commons*.

The ideas created or fortified in Europe by the progress of time that gradually caused the separation of civil and religious authority to prevail, the liberty of conscience and individual liberty, and which forbade the legislator to penetrate the domestic foyer and intermingle with private life, passed the seas and implanted itself in America. Some of the colonists themselves proclaimed tolerance from the beginning on their own account, and it will be the eternal honor of Roger Williams, the founder of the colony of Rhode Island, to have completely unrolled the standard of religious liberty, with all its risks and perils, against the sectarian spirit of Massachusetts. The charter that Charles II issued to this community in 1663 was, at this point, the cradle of a liberalism that would do honor to a legislator in these days. Lord Baltimore in Maryland, the true apostle of fraternity, Penn, in Pennsylvania and part of New Jersey, were animated by these noble principles. Later, the philosophy of the eighteenth century rendered to America, by the efforts of publicists and Southern statesmen, the service of giving a vigorous push to reform of what remained of the regulatory and exclusive system that was copied from the letter of the Bible. Yet there remained something in the ideas everywhere, and the little sympathy that Catholicism receives in dominant opinion, in the principal states of New England.<sup>11</sup> is all too significant a proof.

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<sup>11</sup> Catholicism is more in favor outside of New England.

